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particular sections of the Act and of the regulations at issue.

(4) A written response by the Department to a request filed as stated in paragraph (c)(3) of this section shall be binding, with respect to the requester, on the Department, but shall cease to be binding if the facts are not as stated in the request or, prospectively, if the Department issues a superseding interpretation. In responding to such a request, the Department will, where appropriate, consult with and may obtain the formal concurrence of the appropriate regulatory agencies or their staffs. The Department understands that even if formal concurrence is not received the appropriate regulatory agencies and self-regulatory organizations will give appropriate deference to binding interpretations of the Department. The Department also expects the SEC staff to reflect such interpretations in responding, pursuant to the established procedures of the Commission, to no-action requests concerning rules the SEC enforces.

(5) The Department may decline to issue an interpretation for any reason and, in particular, may require that a requester make inquiry of its appropriate regulatory agency, the Commission or designated examining authority before the Department responds to a request.

(6) The Department will also provide informal oral and written advice, but such advice is not binding on the Department or on any other agency or organization.

(7)(i) Except as provided in paragraphs (c)(3)(iv) and (c)(7)(ii) of this section, every letter or other written communication requesting the Department to provide interpretive legal advice under the Act or to grant, deny or modify an exemption, classification or modification of the regulations, together with any written response thereto, shall be made available for inspection and copying as soon as practicable after the response has been sent or given to the person requesting it. These documents will be made available at the following location: Treasury Department Library, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

(ii) Any person submitting a letter or communication may also simultaneously submit a request that the letter or communication and the Department's response be accorded confidential treatment for a specified period of time not to exceed 120 days from the date the response has been made or given to such person. The request shall state the basis upon which the request for confidential treatment has been made. If the Department determines that the request for confidential treatment should be denied, the requester will be given 30 days to withdraw either the request for confidential treatment or the letter or communication requesting an interpretation, classification, or exemption.

(d) *Effect of Commission interpretations.* Interpretations of the Commission and its staff (including no-action positions) and of the designated examining authorities, of any Commission regulation expressly adopted by reference in these regulations shall be of the same effect as if the regulation being interpreted were solely the Commission's regulation. However, in the event the Treasury has issued a formal interpretation on the subject, the Treasury understands that the Commission will give that interpretation appropriate deference, particularly with respect to both subsequent no-action positions and the continued validity of prior no-action positions.

[52 FR 27926, July 24, 1987, as amended at 53 FR 28984, Aug. 1, 1988]

§ 400.3 Definitions.

Unless otherwise explicitly provided, in this subchapter and for the purposes of these regulations:

(a) *Act* means the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. chapter 2B, as amended);

(b) *Appropriate regulatory agency* has the meaning set out in section 3(a)(34)(G) of the Act (15 U.S.C. 78c(a)(34)(G)), and, with respect to a financial institution for which an appropriate regulatory agency is not explicitly designated, the appropriate regulatory agency is the SEC;

(c) *Associated person* means a person other than a person whose functions are solely clerical or ministerial;

(1) Directly engaged in any of the following activities in either a supervisory or non-supervisory capacity:

(i) Underwriting, trading or sales of government securities;

(ii) Financial advisory or consultant services for issuers in connection with the issuance of government securities;

(iii) Research or investment advice, other than general economic information or advice, with respect to government securities in connection with the activities described in paragraphs (c)(1)(i) and (c)(1)(ii) of this section;

(iv) Activities other than those specifically mentioned which involve communication, directly or indirectly, with public investors in government securities in connection with the activities described in paragraphs (c)(1)(i) and (c)(1)(ii) of this section; or

(2) Directly engaged in the following activities in a supervisory capacity:

(i) Processing and clearance activities with respect to government securities;

(ii) Maintenance of records involving any of the activities described in paragraph (c)(1) of this section;

Provided, however,

(3) That in the case of a financial institution,

(i) Persons whose government securities functions: (A) Consist solely of carrying out the financial institution's activities in a fiduciary capacity and (B) are subject to examination by the appropriate regulatory agency for compliance with requirements applicable to activities by the financial institution in a fiduciary capacity, shall not be considered "associated persons";

(ii) Persons whose sole government securities activities are, without exercising any investment discretion and solely at the direction of customers, to receive and/or transmit customer orders to purchase or sell government securities, but who do not give investment advice or receive transaction-based compensation shall not be considered "associated persons"; and

(iii) Directors and senior officers of the financial institution who may from time to time set broad policy guidelines affecting the financial institution as a whole that are not directly related to the conduct of the financial institu-

tion's government securities business are not considered to be "directly engaged" in the activities described in this paragraph (c);

(d) *Board* means the Board of Governors of the Federal Reserve System;

(e) *Branch or agency of a foreign bank* means a Federal branch or Federal agency of a foreign bank or a State branch or State agency of a foreign bank as such terms are used in the International Banking Act of 1978, Pub. L. 95-369, 92 Stat. 607;

(f) *CFTC* means the Commodity Futures Trading Commission;

(g) *Commission* or *SEC* means the Securities and Exchange Commission;

(h) *Designated examining authority* and *Examining Authority* mean (1) in the case of a registered government securities broker or dealer that belongs to only one self-regulatory organization, such self-regulatory organization, and (2) in the case of a registered government securities broker or dealer that belongs to more than one self-regulatory organization, the self-regulatory organization designated by the Commission pursuant to section 17(d) of the Act (15 U.S.C. 78q(d)) as the entity with responsibility for examining such registered government securities broker or dealer;

(i) *Fiduciary capacity* includes trustee, executor, administrator, registrar, transfer agent, guardian, assignee, receiver, managing agent, and any other similar capacity involving the sole or shared exercise of discretion by a financial institution having fiduciary powers that is supervised by a Federal or state financial institution regulatory agency;

(j) *Financial institution* has the meaning set out in section 3(a)(46) of the Act (15 U.S.C. 78c(a)(46)), and such term explicitly does not include a subsidiary or affiliate of an institution described in such section unless such subsidiary or affiliate is itself described in such section;

(k) *Government securities broker* has the meaning set out in section 3(a)(43) of the Act (15 U.S.C. 78c(a)(43)), and explicitly includes not only registered government securities brokers, but also registered brokers and financial institutions;

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(l) *Government securities dealer* has the meaning set out in section 3(a)(44) of the Act (15 U.S.C. 78c(a)(44)), and explicitly includes not only registered government securities dealers, but also registered dealers and financial institutions;

(m) *Government securities* has the meaning set out in section 3(a)(42) of the Act (15 U.S.C. 78c(a)(42));

(n) *Registered broker or dealer* means a broker or dealer registered pursuant to section 15 or section 15B of the Act (15 U.S.C. 78o, 78o-4) but does not include a municipal securities dealer that is a bank or a separately identifiable department or division of a bank;

(o) *Registered government securities broker or dealer* means a government securities broker or dealer registered pursuant to section 15C(a)(1)(A) of the Act (15 U.S.C. 78o-5(a)(1)(A));

(p) *Secretary* means the Secretary of the Treasury; and

(q) *Treasury* or *Department* means the Department of the Treasury, including in particular the Bureau of the Public Debt.

[52 FR 27926, July 24, 1987, as amended at 55 FR 6604, Feb. 26, 1990]

§ 400.4 Information concerning associated persons of financial institutions that are government securities brokers or dealers.

(a) Every associated person of a financial institution that is a government securities broker or dealer that is not exempt pursuant to Part 401 of this chapter shall file with such financial institution a completed Form G-FIN-4 (§ 449.4 of this chapter) unless such person has on file with such financial institution a completed and current Form U-4 (promulgated by a self-regulatory organization) or Form MSD-4 (as required for associated persons of bank municipal securities dealers).

(b) To the extent any information furnished by an associated person pursuant to paragraph (a) of this section (including information on a Form U-4 or Form MSD-4) is or becomes materially inaccurate or incomplete, such associated person shall promptly furnish in writing to such financial institution, in a form acceptable to the appropriate regulatory agency for such financial

institution, a statement correcting such information.

(c) For the purpose of verifying the information furnished by an associated person pursuant to paragraph (a) of this rule, every government securities broker or dealer that is a financial institution shall make inquiry of all other employers of such associated person during the immediately preceding three years concerning the accuracy and completeness of such information.

(d) Every government securities broker or dealer that is a financial institution not exempt from this section pursuant to Part 401 of this chapter shall:

(1) Promptly obtain and, within 10 days thereafter, file with the appropriate regulatory agency, in a form acceptable to such appropriate regulatory agency, the information required by paragraph (a) of this section (which shall consist of all Forms G-FIN-4 filed and a list of all associated persons who have filed Forms MSD-4 or U-4 with the financial institution since the last such filing, designating whether the associated person is serving in a supervisory or non-supervisory capacity) and by paragraph (b) of this section; and

(2) File with the appropriate regulatory agency within 30 days after the termination of the status of an individual as an associated person a Form G-FIN-5 (§ 449.4 of this chapter), unless—

(i) The financial institution is required to and has filed a Form U-5 or Form MSD-5 with respect to such person; or

(ii) The financial institution notifies the appropriate regulatory agency that the individual will remain in the financial institution's employment and the financial institution will continue to update the information about such individual as provided in paragraph (b) of this section and will file a Form G-FIN-5 within 30 days after the termination of such individual's employment with the financial institution.

(e) Every notice and form filed pursuant to this section shall constitute a